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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 08 - 8004 OMISC.
PVT

IN THE MATTER OF A DEPOSITION
SUBPOENA SERVED IN:

F.B.T. PRODUCTIONS, LLC AND EM2M,
LLC,

Plaintiffs,

v.

AFTERMATH RECORDS, INTERSCOPE
RECORDS, UMG RECORDING, INC.,
AND ARY, INC.,

Defendants.

Case No. _____

[Related to Case No. CV07-3314 PSG (MANx)
(C.D. Cal.)]

**DECLARATION OF COLIN B. VANDELL
IN SUPPORT OF MOTION FOR
PROTECTIVE ORDER**

[Notice of Motion for Protective Order;
Memorandum of Points and Authorities;
Declaration of Kevin Saul; and Exhibits filed
concurrently herewith]

Hearing: [To Be Set By Court]

Date: TBD

Time: TBD

Place: Courtroom TBD
280 South 1st Street
San Jose, CA 95113

FAXED

DECLARATION OF COLIN B. VANDELL

(1) I am an attorney at the law firm of Latham & Watkins LLP, counsel to non-party Apple Inc. ("Apple") in the above-captioned matter, and am licensed to practice law in the State of California. I have personal knowledge of the matters set forth herein, and would competently testify thereto under oath if called as a witness. I submit this Declaration in support of the filing of Apple's motion for protective order to prevent Plaintiffs F.B.T. Production, LLC's and Em2M, LLC's ("Plaintiffs") deposition of Apple chief executive officer Steve Jobs.

(2) The underlying proceeding, *F.B.T. Productions, LLC v. Aftermath Records*, Case No. CV07-3314 PSG (MANx) (C.D. Cal.) (the "FBT Action"), was commenced by Plaintiffs on May 21, 2007 against Defendants Aftermath Records, Interscope Records, UMG Recordings, Inc., and Ary, Inc. (the "UMG Defendants"), asserting claims for breach of contract and declaratory judgment.

(3) Plaintiffs filed a First Amended Complaint ("FAC") on June 13, 2007, again asserting breach of contract and declaratory judgment claims. (Attached hereto as Exhibit A ("Ex. A") is a true and correct copy of the FAC.)

(4) The gravamen of the FAC is that the UMG Defendants have underpaid royalties to Plaintiffs with respect to master recordings of performances by Marshall Mathers, professionally known as Eminem. (Ex. A.)

(5) Plaintiffs allege that the UMG Defendants should pay Plaintiffs royalties for digital distribution of Eminem's recordings (the "Eminem Masters") under the "licensing" provisions of agreements between Plaintiffs and the UMG Defendants (the "UMG Agreements"). Instead, the UMG Defendants have allegedly calculated the royalties under the less favorable "distribution" provisions of the UMG Agreements. (Ex. A.)

(6) The only reference to Apple in the FAC is the allegation that the UMG Defendants "licensed" the Eminem Masters for distribution via Apple's iTunes service (and similarly to numerous other digital service providers), and that iTunes' and other digital service providers' sale of the Eminem Masters should yield a 50% royalty rate for Plaintiffs under the various UMG Agreements. (Ex. A.)

1 (7) On January 11, 2008, Plaintiffs issued a subpoena for documents from
2 Apple (the "Apple Document Subpoena") with numerous broad, irrelevant, and vague requests.
3 (Attached hereto as Exhibit B ("Ex. B") is a true and correct copy of the Apple Document
4 Subpoena.)

5 (8) The Apple Document Subpoena was served on Apple in violation of
6 Federal Rule of Civil Procedure 45; no prior notice was provided to Defendants. (Attached
7 hereto as Exhibit C ("Ex. C") is a true and correct copy of a letter from UMG Defendants'
8 counsel to Plaintiffs' counsel, dated Jan. 22, 2008, that details the violation.)

9 (9) The Apple Document Subpoena demanded, *inter alia*, any and all
10 agreements – and all communications and other documents relating in any way to such
11 agreements – between Apple and UMG regarding music distribution. (Ex. B.)

12 (10) Apple has conferred numerous times with Plaintiffs in a good faith attempt
13 to resolve the overbreadth of the Apple Document Subpoena.

14 (11) In connection with the meet and confer process regarding the Apple
15 Document Subpoena, Apple offered to provide, subject to protective order, the agreements
16 between Apple and any of the UMG Defendants (and any amendments) which pertain to
17 distribution of the Eminem Masters (the "Digital Music Download Sales Agreements," or
18 "Download Agreements").

19 (12) Plaintiffs have indicated their intention to file a motion to compel further
20 responses to the Apple Document Subpoena in the Central District of California.

21 (13) During the meet and confer process that followed Plaintiffs' service of a
22 deposition subpoena on Steve Jobs (the "Jobs Deposition Subpoena"), Plaintiffs' sole
23 explanation for the relevance of Mr. Jobs's deposition is the fact that he authored the essay
24 *Thoughts on Music*. (Attached hereto as Exhibit D ("Ex. D") is a true and correct copy of the
25 Jobs Deposition Subpoena. Attached hereto as Exhibit E ("Ex. E") is a true and correct copy of
26 the essay *Thoughts on Music*.)
27
28

1 (14) Plaintiffs claim that the deposition of Mr. Jobs would seek to explore Mr.
2 Jobs's interpretation of the term "license" that is mentioned once in the *Thoughts on Music*
3 essay.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Executed this 24th day of March, 2008 in Los Angeles, California.

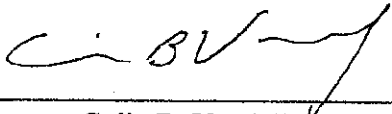
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8
9 Colin B. Vandell

Exhibit A

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T-816 P.002/018 F-132

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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

**F.B.T. PRODUCTIONS, LLC,
 and Em2M, LLC,**

Plaintiffs,

v.

**AFTERMATH RECORDS doing
 business as AFTERMATH
 ENTERTAINMENT;
 INTERSCOPE RECORDS;
 UMG RECORDINGS, INC.; and
 ARY, INC.,**

Defendants.

Case No. CV 07-03314 PSG (MANx)

**FIRST AMENDED COMPLAINT
 FOR BREACH OF CONTRACT;
 DECLARATORY JUDGMENT**

JURY DEMAND

DOCKETED ON CM

JAN 14 2007

BY me 009

*Issued
 summons*

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 U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 LOS ANGELES

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T-816 P.003/019 F-132

1 Plaintiffs F.B.T. Productions, LLC, and Em2M, LLC (collectively
2 "Plaintiffs"), by and through their attorneys, for their Complaint against the
3 Defendants named above allege as follows:
4

5 I. NATURE OF THE ACTION

6
7 1. This action for breach of contract and declaratory judgment against
8 Defendants named herein arises from Defendants' failure to properly account to
9 and pay Plaintiffs royalties with respect to master recordings of the musical
10 performances by Marshall B. Mathers III professionally known as Eminem
11 ("Eminem") licensed from Defendants by various "Music Download Providers"
12 for reproduction and sale as more fully described hereinbelow (including but not
13 limited to iTunes, Buy.com, Napster, among others) and by "Mastertone
14 Providers" (including but not limited to Cingular Wireless, Sprint, T-Mobile, and
15 certain affiliates of Defendants, among others).
16
17
18

19 2. This action seeks remedies for Defendants' knowing violations of the
20 terms of their agreements with Plaintiffs whereby Defendants have paid Plaintiffs
21 significantly less royalties than are owed to Plaintiffs for the licensing of the
22 master recordings to Music Download Providers and Mastertone Providers.
23
24

25 3. Plaintiffs seek damages for breach of contract. Plaintiffs further seek
26 a declaration, pursuant to 28 U.S.C. §2201, that Defendants are obligated to pay
27 Plaintiffs an amount equal to fifty percent (50%) of Defendants' net receipts from
28

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1 the sale of records or other uses of the master sound recordings which are licensed
2 by Defendants or Defendants' licensees to others for their manufacture and sale of
3 records or for any other uses.
4

5 4. Defendants' recording agreements with Plaintiffs require Defendants
6 to pay Plaintiffs fifty percent (50%) of all net receipts received by Defendants on
7 masters licensed by Defendants or Defendants' licensees to others for
8 their manufacture and sale of records or for any other use.
9
10

11 5. Rather than paying Plaintiffs fifty percent (50%) of the net receipts
12 paid to Defendants for the licensed digital uses of master recordings featuring
13 Eminem's performances, Defendants wrongfully (a) calculate royalties by applying
14 an album royalty rate to an artificially imputed retail price of the download without
15 a packaging or configuration deduction; (b) incorrectly compute domestic digital
16 download sales using a fabricated retail price of 130% of wholesale price rather
17 than the retail price actually charged to consumers by the licensees; and (c) apply
18 territory reductions to so-called foreign digital download sales without an
19 economic or contractual basis for such reductions.
20
21

22 6. As a result of Defendants' intentional past and continuing contractual
23 breaches, Plaintiffs have been damaged by the loss of royalty payments in excess
24 of the jurisdictional limits of this Court which royalty payments Defendants have
25 retained for their own benefit.
26
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1 as Aftermath Entertainment ("Aftermath") is a joint venture between three entities:
2 (1) Interscope Records, a California general partnership (the "Interscope
3 Partnership"), (2) Interscope Records, an unincorporated division of UMG
4 Recordings, Inc., a Delaware corporation authorized to do business in the State of
5 California ("UMG"), and (3) ARY, Inc., a California corporation ("ARY"). The
6 Interscope Records, a Partnership, is a general partnership comprised of three
7 entities: (a) Interscope Records, an unincorporated division of UMG, (b) UMG,
8 and (c) PRI Productions, Inc., a Delaware Corporation. Based on the citizenship of
9 the entities of the joint venture, Aftermath Entertainment is a citizen of California
10 and Delaware.

11
12 a. UMG is organized under the laws of the State of Delaware and
13 is a citizen of that state, as is its unincorporated division, Interscope Records.
14 UMG Recordings and its divisions also are citizens of the state that is UMG's
15 principal place of business, which is California. According to its website,
16 "UMG's corporate headquarters are located at 2220 Colorado Avenue, Santa
17 Monica, CA 90404 and 1755 Broadway, New York, NY 10019." According to its
18 registration on file with the California Secretary of State, UMG is registered in the
19 State of Delaware and its offices are located at "10 Universal City Plaza, Universal
20 City, California, 91608." Lastly, UMG's critical copyright and licensing
21 department and its Film & TV Licensing departments are stationed in California as

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1 well. On information and belief, Plaintiffs allege that UMG employs a majority of
2 its employees in California, and the majority of its executive and administrative
3 functions are performed in California because (a) at least one of its two
4 headquarters are located in California, (b) UMG's critical licensing and copyright
5 divisions are located in California, and (c) a majority of its operations, both
6 executive and administrative, take place in California.
7

8
9 b. PRI Productions, Inc., (hereinafter, "PRI") is a Delaware
10 Corporation registered to do business in California. PRI's principal place of
11 business is California. It lists its address with the California Secretary of State as
12 "10 Universal City Plaza, Universal City, CA, 91608." This address is the exact
13 same address as UMG registered with the California Secretary of State. On
14 information and belief, Plaintiffs allege that PRI is involved in the entertainment
15 and music industries and performs the majority of its operations in California in
16 concert with UMG. Additionally, Plaintiffs allege on investigation and discovery
17 that PRI has no executive and no administrative staff operating outside of
18 California. All of its operations therefore take place in California. It is a citizen of
19 California and Delaware.
20

21
22 11. Interscope Records, a Partnership, is comprised of UMG and PRI, and
23 is a citizen of Delaware and California because UMG and PRI are both citizens of
24 Delaware and California.
25
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1 12. Interscope Records, an unincorporated division of UMG, is legally
2 indistinguishable from UMG, and its citizenship is the same as UMG. As
3 explained above, UMG is a citizen of Delaware and California.
4

5 13. ARY is a registered California Corporation. Plaintiffs allege on
6 information and belief that ARY is owned and operated solely by Andre Rommel
7 Young, Jr., professionally known as the hip-hop artist "Dr. Dre." The principal
8 place of business of ARY is California. Its registered mailing address is 10100
9 Santa Monica Blvd., Suite 1300, Los Angeles, California 90067. ARY lists its
10 agent for service of process as Howard King of the law firm King, Holmes,
11 Paterno & Berliner, LLP, located at 1900 Avenue of the Stars, 25th Floor, Los
12 Angeles, California 90067. On information and belief, Plaintiffs allege that Mr.
13 Young lives in California and runs ARY exclusively from California. Also on
14 information and belief, Plaintiffs allege that ARY has no employees other than
15 Andre R. Young, Jr. and has no assets and no operations outside of California.
16 ARY's principal place of business is California, and ARY is a citizen of California.
17
18
19
20
21

22 14. Defendant Aftermath is a citizen of California and Delaware.
23

24 15. For purposes of diversity jurisdiction, Defendants Aftermath, the
25 Interscope Partnership and UMG are all citizens of Delaware and California.
26 Defendant ARY, Inc., is a citizen of California. Plaintiffs, as citizens of Michigan,
27 are diverse from Defendants' citizenship.
28

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JURISDICTION AND VENUE

16. The jurisdiction of this Court is based upon 28 U.S.C. §1332 as there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs. This action for declaratory judgment is brought pursuant to 28 U.S.C. §2201 which is within the exclusive jurisdiction of federal courts pursuant to 28 U.S.C. §1331. Venue is proper in this District pursuant to 28 U.S.C. §§1391 and 1400(a).

17. Personal jurisdiction over each of the Defendants is proper in this Court, among other reasons, on the grounds that (a) Defendants and/or Defendants' agents transact business in the State of California; (b) Defendants' wrongful conduct alleged herein occurred in the State of California and this District; and (c) the Agreements that are the subject of this action were entered into in this District.

18. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(c).

GENERAL ALLEGATIONS

19. On November 28, 1995, F.B.T. entered into an Exclusive Artist's Recording Agreement with Eminem ("1995 Agreement"). The 1995 Recording Agreement between F.B.T. and Eminem subsequently was amended on November 5, 1998, February 22, 1999 and November 28, 1999.

20. On March 9, 1998 F.B.T. and Aftermath entered into a written

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1 agreement whereby F.B.T. agreed to furnish to Aftermath the exclusive recording
2 services of "Eminem." ("March 9, 1998 Agreement") On March 9, 1998, Eminem
3 also entered into a Letter of Inducement with Aftermath whereby Eminem
4 acknowledged and approved of the agreement between F.B.T. and Aftermath for
5 Eminem's exclusive recording services. ("Letter of Inducement")
6

7
8 21. On September 27, 2000, F.B.T., Eminem and Aftermath entered into a
9 novation of the March 9, 1998 Agreement between F.B.T. and Eminem whereby
10 F.B.T. assigned all of its rights under the March 9, 1998 Agreement to Eminem,
11 Eminem assumed all of F.B.T.'s rights and obligation to Aftermath, and Aftermath
12 assumed F.B.T.'s obligations to Eminem so that Eminem would have a direct
13 relationship with Aftermath effective September 27, 2000 ("Novation"). Pursuant
14 to the Novation, F.B.T. irrevocably directed Aftermath to compute, account and
15 pay directly to Joel Martin, twenty-five percent (25%) of the monies payable to
16 F.B.T. under the Novation at the same times and on the same basis as Aftermath
17 accounts to F.B.T. All parties expressly agreed Joel Martin is a third party
18 beneficiary under the Novation.
19
20
21
22

23 22. Pursuant to the terms of the Novation, among other things, F.B.T.
24 remained an income participant with respect to all master recordings released by
25 Aftermath under the Novation and to which F.B.T. would have had rights prior to
26 the execution of the Novation (for purposes of this Complaint, the "Eminem
27
28

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1 Masters"). Further, pursuant to the terms of the Novation, the 1995 Recording
2 Agreement with its three subsequent modifications as well as the March 9, 1998
3 Agreement and Letter of Inducement were affirmed by the parties. One of the
4 terms of the Novation provided that the royalties owed by Aftermath pursuant
5 thereto were to be divided between F.B.T. and Eminem.
6

7
8 23. On or about August 22, 2003 and effective as of July 2, 2003, a new
9 agreement was entered into between Aftermath and Eminem regarding, among
10 other things, the Eminem Masters ("2003 Agreement"). Pursuant to the terms of
11 the 2003 Agreement, all "Prior Agreements" are affirmed expressly including
12 (a) the 1995 Recording Agreement and amendments thereto; (b) the March 9, 1998
13 Agreement and Letter of Inducement; and (c) the September 27, 2000 Novation.
14

15
16 24. On September 20, 2004, Joel Martin assigned all of his interests in
17 and to the 2000 Novation and under the 2003 Agreement to Em2M LLC, and all
18 payments and accountings otherwise due to Joel Martin thereafter were due to be
19 made by Defendants to Em2M LLC.
20

21
22 25. On November 1, 2004, F.B.T. and Eminem, on the one hand, and
23 Aftermath, on the other hand, entered into a written modification of the Novation.
24 ("2004 Amendment").
25

26 26. Pursuant to the terms of the foregoing agreements referenced
27 hereinabove, F.B.T. and Eminem caused certain recorded performances of Eminem
28

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1 to be delivered to Defendants, and Defendants agreed to manufacture, distribute,
2 sell, and license for sale and distribution those master recordings in various
3 configurations throughout the Universe.
4

5 27. Plaintiffs have each performed their respective material obligations
6 pursuant to the terms of each of the agreements referenced hereinabove.
7

8 28. Pursuant to the terms of the March 9, 1998 Agreement and the 2003
9 Agreement, Defendants were to provide certain remuneration to Plaintiffs,
10 including royalties, and to furnish Plaintiffs with semi-annual royalty accounting
11 statements setting forth the computations of each Plaintiff's entitlement to royalties
12 for the commercial exploitation of the Eminem Masters, which statements were to
13 be accompanied by any royalty payments due.
14

15 29. Pursuant to the terms of the March 9, 1998 Agreement and the 2003
16 Agreement, Defendants agreed to pay certain royalties as follows: "On masters
17 licensed by us or our Licensees to others for their manufacture and sale of records
18 or for any other use, your royalty shall be an amount equal to fifty percent (50%)
19 of our net receipts from the sale of those records or from those other uses of the
20 masters." The "other uses" of the Eminem Masters include, without limitation,
21 Defendants, or Defendants' [L]icensees, licensing to various Music Download
22 Providers and Mastertone Providers for digital uses, including digital downloads,
23 digital streaming and mastertones. The identities of each of the Music Download
24
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1 Providers and Mastertone Providers are known exclusively to Defendants.

2 30. Under the agreements entered into between Plaintiffs and Defendants,
3 Defendants were obligated to act in good faith in their dealings with Plaintiffs and
4 to render accurate royalty accounting statements, and to properly credit and
5 account for the royalties generated by the commercial exploitation of the Eminem
6 Masters.
7

8 31. During the period January 1, 2002 to present, Defendants on
9 Defendants' licensees have licensed the Eminem Masters to various Music
10 Download Providers including but not limited to iTunes, Buy.com, Napster, among
11 others, and Mastertone Providers (including but not limited to Cingular Wireless,
12 Sprint, T-Mobile, and certain affiliates of Defendants, among others).
13

14 32. Upon information and belief, Defendants' agreements with the Music
15 Download Providers and Mastertone Providers involve the licensing of the
16 Eminem Masters to such Music Download Providers and Mastertone Providers for
17 sale in the form of digital music files which is encompassed in the definition of
18 "other uses of the masters" as set forth in the March 9, 1998 Agreement and the
19 2003 Novation.
20

21 33. In 2005, F.B.T. and Eminem retained an accounting firm to review the
22 accounting records of Defendants and to perform a royalty audit on behalf of
23 Plaintiffs for the periods January 1, 2002 through and including June 30, 2005. On
24

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1 February 10, 2006, the accounting firm submitted its audit report to Defendants.
2 As a result, the February 10, 2006 audit showed, among other things, that
3 Plaintiffs, collectively, have been underpaid by Defendants for the digital uses in
4 an amount in excess of \$650,000.
5

6 **FIRST CAUSE OF ACTION**
7 **(BREACH OF CONTRACT)**
8

9 34. Plaintiffs reallege each and every allegation in Paragraphs 1 through
10 33 hereof as if fully set forth herein.

11 35. Defendants have failed to comply with the terms of the March 9, 1998
12 Agreement and the 2003 Agreement by failing to account and pay Plaintiffs fifty
13 percent (50%) of Defendants' net receipts from the digital uses of the Eminem
14 Masters by the Music Download Providers and Mastertone Providers. Defendants
15 apply an incorrect formula for calculating royalties with respect to those royalties
16 to be paid to Plaintiffs which results in Plaintiffs collectively receiving an average
17 royalty of approximately twelve percent (12%) instead of the fifty percent (50%)
18 required by the terms of the agreements.
19
20
21
22

23 36. On February 21, 2007, and pursuant to paragraph 15(b) of the March
24 9, 1998 Agreement and the 2003 Agreement, Plaintiffs sent written notice to
25 Defendants by certified mail, return receipt requested, advising Defendants of their
26 breach of said agreements and requesting that Defendants cure the breach within
27 thirty (30) days after the date of the notice.
28

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1 37. Despite said notice, Defendants have failed and refused to cure the
2 breach and continue to incorrectly calculate royalties in violation of the March 9,
3 1998 Agreement and 2003 Agreement. As a result of Defendants' improper
4 calculation of royalties, Defendants have further breached said agreements by their
5 failure (a) to account properly, (b) to credit and pay the correct amount of royalties
6 due to Plaintiffs; and (c) to render royalty statements reflecting the correct amount
7 of royalties due to Plaintiffs.
8
9

10
11 38. By reason of the foregoing and other acts not presently known by
12 Plaintiffs, Defendants have knowingly and materially breached its contractual
13 obligations to Plaintiffs under the March 9, 1998 Agreement and the 2003
14 Agreement, and wantonly have disregarded the rights of Plaintiffs.
15

16 39. Pursuant to the terms of the 2003 Agreement, should any party
17 institute any action or proceeding at law or in equity to enforce any provision of
18 the 2003 Agreement, including an action for declaratory relief, or for damages by
19 reason of an alleged breach of any provision of the 2003 Agreement, or otherwise
20 in connection with the 2003 Agreement or any of its provisions, the prevailing
21 party is entitled to recover from the non-prevailing party reasonable and actual
22 attorneys' fees and costs for services rendered to the prevailing party in such action
23 or proceeding.
24
25

26
27 40. As a result of the wrongful conduct of Defendants alleged
28

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1 hereinabove, Plaintiffs have been damaged in an amount to be determined at the
2 time of trial, which upon information and belief is well in excess of one million
3 dollars (\$1,000,000) for the digital uses.
4

5 **SECOND CAUSE OF ACTION**
6 **(DECLARATORY JUDGMENT)**

7 41. Plaintiffs reallege each and every allegation in Paragraphs 1 through
8
9 40 hereof as if fully set forth herein.

10 42. Pursuant to 28 U.S.C. §2201, this Court may declare the rights and
11 other legal relations of any interested party seeking such declaration whether or not
12 further relief is, or could be, sought. Any such declaration shall have the force and
13 effect of a final judgment or decree and shall be reviewable as such.
14

15 43. Plaintiffs contend, and seek a declaration, that, pursuant to the March
16 9, 1998 Agreement and the 2003 Agreement, Defendants are obligated to pay
17 Plaintiffs, collectively, fifty percent (50%) of Defendants' net receipts derived
18 from the licensing by Defendants or Defendants' Licensees to others "for their
19 manufacture and sale of records or for any other uses" of the Eminem Masters,
20 including, without limitation, Music Download Providers and Mastertone
21 Providers, the identities of which are known exclusively by Defendants.
22 Defendants deny they have such an obligation under said agreements.
23
24
25
26

27 44. Plaintiffs have no adequate remedy at law.

28 45. By reason of the foregoing, there is a present controversy between

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1 Plaintiffs and Defendants for which a declaratory judgment should be entered
2 determining that the March 9, 1998 Agreement and the 2003 Agreement obligates
3 Defendants to pay Plaintiffs, collectively, fifty percent (50%) of Defendants' net
4 receipts from the licensing by Defendants or Defendants' Licensees of the Eminem
5 Masters to Music Download Providers and Mastertone Providers for sale.
6

7 PRAYER FOR RELIEF

8
9 WHEREFORE, Plaintiffs demand a jury trial against Defendants on those
10 matters to be determined by a jury and further pray for judgment against
11 Defendants, and each of them, as follows:
12

13 1. On the First Cause of Action, judgment awarding Plaintiffs
14 compensatory damages, the exact amount is to be determined at the time of trial;
15

16 2. On the Second Cause of Action, an order and judgment declaring that
17 the March 9, 1998 Agreement and the 2003 Agreement obligates Defendants to
18 pay Plaintiffs, collectively, fifty percent (50%) of Defendants' net receipts from the
19 licensing by Defendants or Defendants' Licensees to Music Download Providers,
20 Mastertone Providers, and others for digital and other licensed uses of the Eminem
21 Masters, including, without limitation, digital downloads, digital streaming and,
22 digital mastertones;
23

24 3. An award of reasonable and actual attorneys' fees and costs for
25 services rendered to Plaintiffs in this action;
26
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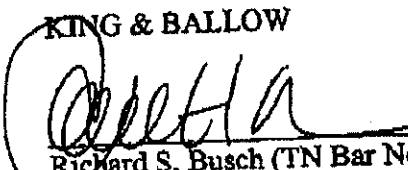
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4. An award of pre- and post-judgment interest;
5. Such other and further relief as the Court deems just and proper.

DATED: June 12, 2007

Respectfully submitted,

KING & BALLOW



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Pro hac vice pending

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Facsimile: (310) 556-2920

mblock@chrisglase.com

Attorneys for Plaintiffs

Exhibit B

AO 88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the
United States District Court
 Northern District of California

F.B.T. Productions, LLC, et al.

v.

Aftermath Records, et al.**SUBPOENA IN A CIVIL CASE**

Case No. CV 07-3314 PSG (MANx)
 Central District of California

TO: Custodian of the Records
 Apple Computers, Inc.
 1 Infinite Loop
 Cupertino, CA 95014

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Nogara Reporting Service
 130 Battery Street, Suite 580
 San Francisco, CA 94111

January 28, 2008
 10:00 A.M.

See Exhibit A.

PLACE

DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Richard S. Busch 1/28/08

Plaintiff

1/28/08

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Richard S. Busch, Esq.
 King & Ballou
 316 Union Street
 1100 Union Street Plaza
 Nashville, TN 37201
 (615) 259-3456

22

SCHEDULE A

I. Definitions

A. "You" or "Apple" refers to Apple Computer Inc. its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

B. "RIAA" shall mean the Recording Industry Association of America (RIAA), its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

C. "Aftermath" refers to Aftermath Records d/b/a Aftermath Entertainment its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

D. "Interscope" refers to Interscope Records its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

E. "UMG" or "Universal" refers to UMG Recordings, Inc., its parent company, its subsidiaries, its affiliates, and any other related company, as well as their agents, representatives, attorneys, and/or any other persons or entities acting or purporting to act on their behalf.

F. "ARY" refers to ARY, Inc. its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

G. "Document," "Electronically Stored Information," and "Things" are

1 defined to be synonymous in meaning and equal in scope to the usage of these
2 terms in FRCP Rule 34. A draft or non-identical copy is a separate document,
3 electronically stored information, or thing within the meaning of this term.
4

5 H. "Communication" shall mean any transmission of information by oral,
6 graphic, written, pictorial, or other perceptible means, including, but not limited to,
7 telephone conversations, letters, documents, memoranda, notes, telegrams,
8 facsimile, transmissions, electronic mail, meetings, and personal conversations.
9

10 I. "And" and "or" each shall be construed either conjunctively or
11 disjunctively as necessary to bring within the scope of these requests for
12 production of documents, electronically stored information, and things any
13 information or document that might otherwise be construed to be outside its scope.
14

15 J. References to the plural shall include the singular; references to the
16 singular shall include the plural.
17

18 K. References to the feminine shall include the masculine; references to
19 the masculine shall include the feminine.
20

21 L. All legal terms, accounting terms, and other technical terms associated
22 with a particular industry, profession or identifiable body of knowledge shall have
23 the meanings customarily and ordinarily associated with those terms with those
24 terms within that industry, profession or discipline.
25
26
27

28 **II. DOCUMENT, ELECTRONICALLY STORED
INFORMATION, AND THINGS REQUESTS**

1
2 1. Each and every document that in any way refers to, relates to, or
3 pertains to the formation of the agreements between you and Universal, or any
4 other record company, for the distribution of music in digital format, including but
5 not limited to, the efforts between yourself, the RIAA, and/or any other third party
6 to draft, structure, or characterize such agreements as reseller agreements or
7 otherwise, and not license agreements.
8
9

10 2. Each and every communication between yourself and the RIAA that
11 in any way relates to, refers to, or pertains to any efforts to draft, structure, or
12 characterize the agreements between yourself and Universal as reseller agreements
13 or otherwise, and not license agreements.
14
15

16 3. Each and every communication between yourself, Universal, and/or
17 any other third party that in any way relates to, refers to, or pertains to any efforts
18 to draft, structure, or characterize the agreements between yourself and Universal
19 as reseller agreements or otherwise, and not license agreements.
20
21

22 4. All drafts of the document entitled "Thoughts On Music," or
23 documents and communications related thereto, authored by Steve Jobs, and
24 released on February 6, 2007.
25

26 5. Each and every document that identifies music as an "iTunes digital
27 release," "iTunes release," or a release by iTunes.
28

6. Each and every internal document or record referencing Universal or

1 other record company, or other rights owner, in which such entity is characterized
2 as a licensor.

3
4 7. Each and every agreement in which iTunes obtained the rights to
5 release or sell an artist's music through an agreement directly with an artist, or its
6 representatives, even if Universal or other record company also executed such
7 agreement.
8

9
10 8. Each and every agreement in which iTunes obtained the rights to
11 release or sell an artist's music through an agreement directly with the owner,
12 publisher, or administrator of the copyright in the underling musical composition,
13 or their representatives, even if Universal or other record company also executed
14 such agreement, including but not limited to all mechanical licenses.
15

16
17 9. Each and every document referencing or relating to all downloads of
18 the Eminem Masters, including but not limited to any financial information related
19 thereto.
20
21
22
23
24
25
26
27
28

Exhibit C

MUNGER, TOLLES & OLSON LLP

355 SOUTH GRAND AVENUE
THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1550
TELEPHONE (213) 683-9100
FACSIMILE (213) 687-3702

550 MISSION STREET
SAN FRANCISCO, CALIFORNIA 94105-2907
TELEPHONE (415) 512-4000
FACSIMILE (415) 512-4077

January 22, 2008

ROBERT N. JOHNSON
ALAN V. FRIEDMAN
RONALD A. OLSON
RICHARD S. VOLPERT
DENNIS C. BROWER
ROBERT E. DENHAM
JEFFREY I. WEINBERGER
ROBERT L. ADLER
CARY S. LOHMAN
CHARLES D. SIEGAL
RONALD R. MEYER
GREGORY P. STONE
VALA S. MARTINEZ
BRAD D. BRIAN
BRADLEY S. PHILLIPS
GEORGE M. DABNEY
WILLIAM O. TENKO
STEVEN L. QUIRBY
ROBERT B. PHILIPS
STEPHEN M. KRISTOVICH
JOHN W. SPIEGEL
TERRY E. SANCHEZ
STEVEN H. PERRY
MARK B. HELM
JOSEPH D. LEE
MICHAEL R. GOYEN
MICHAEL C. SOLOFF
GREGORY D. PHILLIPS
LAWRENCE C. BURTH
KATHLEEN M. HODGOWELL
GLENN D. POMERANTZ
THOMAS B. WILDER
RONALD C. HAUSSMAN
PATRICK J. CAFFERTY, JR.
JAY M. FULTON
D'HALEY M. MILLER
SANDRA A. BEVILLE-JONES
MARK A. SPSTEIN
HENRY WEISBERMAN
KEVIN S. ALLRED
BART H. WILLIAMS
JEFFREY A. HEINTE
JUDITH T. KITANO
KIMBERLY UNKLEY MYLES
MARC T.D. DOWNSKY
JEROME C. ROTH
STEPHEN D. ROSE
JEFFREY L. BLEICH

GARTH T. VINCENT
TED DAME
MARK SHINDLERMAN
STUART N. BENATOR
MARTIN D. BORN
DANIEL A. COLLINS
RICHARD E. DRUGOVAN
ROBERT L. DELL'ANGELO
BRUCE A. ARBOTT
JONATHAN E. ALTMAN
MICHAEL J. O'SULLIVAN
KELLY M. KLAUS
DAVID S. GOLDMAN
BARTON A. GROSS
KEVIN S. MARUSA
HOJOON HWANG
KRISTIN S. ESCALANTE
OWISO C. CHIELLI
ANDREA WEISS JEFFRIES
PETER A. DETRE
PAUL J. WATFORD
DANA S. TREISTER
CARL H. MOOR
DAVID M. ROSENBERG
DAVID H. FRY
LEA J. DENKIN
MALCOLM A. HENCKES
GREGORY J. WEINMAYER
TAMERLIN J. GOOLEY
JAMES C. RUTEN
J. MARTIN WILLIAMS
RICHARD ST. JOHN
ROBT H. SINGHA
LUSI LI
CAROLYN HOCKEY LUEDTKE
C. DAVID LEE
MARK W. WIM
BRETT J. RODA
SEAN KENOVITZ
SUSAN R. SEARO
LINDA B. GOLDMAN
NATALIE PAGES STONE
FRED A. HOWLIT, JR.
JOSPH B. KAMICH
MONIKA S. WIENER
LYNN HEALEY BOADUO
RANDALL G. SOMMER

AARON M. HAY
SHONT E. MILLER
MARIA SEPERIAN
MANUEL P. CAGHAN
ERIC J. LOREZIN
KATHERINE K. HUANG
KATHERINE M. FORSTER
ROSEMARIE T. KING
JOSEPH J. YAMARA
BLANCA FROMM YOUNG
DIOE DUSELAJ
KATE K. ANDERSON
ALISON J. BARREKOVITZ
E. DORSEY HEINE
SAMUEL N. WEINSTEIN
PAUL M. ROHWER
KIT JOHNSON
JAY R. SHITA
SUSAN TRAVIS BOYD
JENNIFER L. ROSE
TODD J. ROSEN
DANIEL L. DEYSER
BRIAN R. HOCHLEUTNER
DEAN M. KAMAMOTO
DANIEL A. DAUS-OWENY
E. MARTIN ESTADIA
JASON RAHTANEN
AMY C. TOVAR
REBECCA GOSL LYNCH
JONATHAN H. BLAVIN
JOHN R. GRIFFIN
KAREN J. FESSLER
MICHELLE T. FRIEDLAND
J. RAJA LANNANCE
LINA C. WITAKE
HEUNDA EADES LEMONE
ANDREW W. SONG
DANIEL A. RECH
YIMANCE C. EDWARDS
JULIE D. CANTON
SETH GULDMAN
FADIA ISHAM RAPEDEE
DANIEL J. POWELL
DANIEL B. LEVIN
JOSHUA D. GROSSMAN
VICTORIA L. BOESCH
HAUTW J. CHEN
BRAD SCHNEIDER

DAVID W. SWIFT
JEAN Y. WHEE
ALEXANDRA LAMO LUSMAN
ODENIEVE A. COX
KOREAN HIN
MISTY N. SANFORD
BRIAN R. DUFF
ANNE FEINBERG
JOEL D. WHITLEY
JEFFREY C. ZINSHEISTER
MONICA DIOSB HANDE
KATHARINE L. HALL
KATHERINE KU
KIMBERLY A. CH
SHOSHANA E. BARNETT
TINA CHANGCHONG
TERMAN C.B. MAGATA
ADAM B. BADINI
ASHTAG Q. CHOWDHURY
LEE S. TAYLOR
DEREK J. WATPHAN
KIMBERLY D. ENGINAS
HAROLD J. SPIEGEL
GABRIEL P. SANCHEZ
BETHANY C. WOODARD
PAULA R. LEVY
CONNIE Y. CHANG
DAVID C. YANO
WILLIAM E. GAND
THILY PAN
BILL WARD
HENRY E. ORRICH
MATTHEW J. SPENCE
BENJAMIN W. HOWELL
WESLEY SHIM
JACOB S. KREKHAMAP
PAUL J. KATZ
ARLO A. NEUMAN
RICHARD D. EISENSHAOF
ALLISON B. STEIN
PETER R. TAYT
OF COUNSEL
E. LEROY TOLLES
RETIRED

A PROFESSIONAL CORPORATION

BY E-MAIL AND U.S. MAIL

Richard S. Busch, Esq.
King & Ballow
315 Union Street
1100 Union Street Plaza
Nashville, Tennessee 37201

WRITER'S DIRECT LINE
(213) 683-9238
(213) 683-4038 FAX
Kelly.Klaus@mto.com

Re: F.B.T. Productions, LLC et al. v. Aftermath Records et al., Case No. CV 07-3314-PSG (C.D. Cal.)

Dear Mr. Busch:

We have become aware that you have been serving subpoenas on third parties in the above-referenced case without complying with your obligations under Rule 45 to provide notice of the subpoenas to us.

We are aware of four apparent instances of your violating Rule 45 in this manner: your subpoena to the Recording Industry Association of American, your subpoena to Apple Inc., and your two subpoenas to MusicNet. We only became aware of the subpoenas to MusicNet because your office inadvertently mailed the originals of these subpoenas to us. We still have not received the notice that Rule 45(b)(1) requires for any subpoenas you have issued.

Among other things, the notice rule allows parties to the case an opportunity to object to a requested production. See 1991 Adv. Comm. Note to Subdivision (b); *Butler v. Biocore Med. Techs., Inc.*, 348 F.3d 1163, 1173 (10th Cir. 2003). Your failure to provide the required notice threatens defendants' rights. The Court may strike your subpoenas or impose

4310186.1

27

MUNGER, TOLLES & OLSON LLP
Richard S. Busch, Esq.
January 22, 2008
Page 2

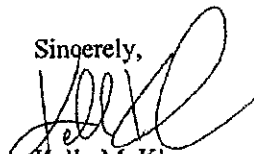
other sanctions on account of your violations. See *Florida Media, Inc. v. World Publs., LLC*, 236 F.R.D. 693, 695 (M.D. Fla. 2006). Our clients do not waive, but rather expressly reserve, all of their rights to relief on account of your non-compliance with the Rules to date.

If you have served any subpoenas without giving us notice under Rule 45(b)(1), please notify us immediately of the relevant parties and send us copies of all papers you have served on them. Please comply with the Rules on a going-forward basis.

Finally, as you know from your representation of the plaintiff LLCs in the *Eight Mile v. Apple* action, we represent Apple in that case. Your subpoena to Apple in this case obviously concerns matters related to the *Eight Mile* action. Your attempt to communicate directly with Apple on matters that obviously are related to that litigation may be a violation of the rules of professional conduct. Please be sure that this does not happen again.

As requested by your office, we are returning the originals of the four subpoenas referenced above with the original of this letter. Thank you for your immediate attention to these matters.

Sincerely,



Kelly M. Klaus

Enclosures (with mailed copy only)

Exhibit D

1 Richard S. Busch (TN Bar No. 014594)

2 *Attorney Pro Hac Vice*

3 KING & BALLOW

315 Union Street, Suite 1100

Nashville, TN 37201

(615) 259-3456 Facsimile: (615) 726-5417

5 Paul H. Duvall (State Bar No. 73699)

6 KING & BALLOW

9404 Genesee Avenue, Suite 340

La Jolla, CA 92037-1355

(858) 597-6000 Facsimile: (838) 597-6008

9 Mark L. Block (State Bar No. 115457)

10 Christensen, Glaser, Fink, Jacobs, Weil, & Shapiro, LLP

11 10250 Constellation Blvd., 19th Floor

12 Los Angeles, CA 90067

(310) 553-3000 Facsimile: (310) 556-2920

13 Attorneys for Plaintiffs F.B.T. Productions, LLC and Em2M, LLC

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

17 **F.B.T. PRODUCTIONS, LLC,**
18 **and Em2M, LLC,**

19 **Plaintiffs,**

20 **v.**

21 **AFTERMATH RECORDS doing**
22 **business as AFTERMATH**
23 **ENTERTAINMENT;**
24 **INTERSCOPE RECORDS;**
25 **UMG RECORDINGS, INC.; and**
26 **ARY, INC.,**

27 **Defendants.**

Case No. CV 07-3314 PSG (MANx)

NOTICE OF DEPOSITION OF
STEVE JOBS

1 TO ALL DEFENDANTS AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that pursuant to Rules 26 and 30 of the Federal
3 Rules of Civil Procedure, Plaintiffs F.B.T. Productions, LLC, and Em2M, LLC
4 will take the deposition upon oral examination of Steve Jobs.
5

6 The deposition will take place on March 27, 2008, at 9:00 am P.S.T. at the
7 offices of Latham & Watkins, LLP, 140 Scott Drive, Menlo Park, CA 94025, and
8 continue from day to day, Sundays and holidays excluded, until completed, before
9 a notary public or other officer authorized to administer oaths. Pursuant to Rule
10 30(b)(2), the deposition shall be recorded by videographic and stenographic means.
11

12 DATED: March 3, 2008

13 Respectfully submitted,

14
15 KING & BALLOW
16

17
18 *Richard S. Busch w/ permission*
19 Richard S. Busch (TN Bar No. 014594) *AKA*
20 Paul H. Duvall (State Bar No. 73699)

21 - and -

22 Mark Block (State Bar No. 115457)
23 Christensen, Miller, Fink, Jacobs, Glaser

24 Attorneys for Plaintiffs
25
26
27
28

CERTIFICATE OF SERVICE**STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

I, Sherie Johnson, declare:

I am employed in the County of San Diego, State of California. I am over the age of eighteen years, and not a party to the within action. My business address is 9404 Genesee Avenue; Suite 340; La Jolla, CA 92037. On March 3, 2008, I instructed First Legal Support Services to personally serve a true copy of the attached documents entitled **NOTICE OF DEPOSITION OF STEVE JOBS** and **SUBPOENA IN A CIVIL CASE TO STEVE JOBS** upon:

Glenn D. Pomerantz, Esq. Kelly M. Klaus, Esq. Kimberly D. Encinas, Esq. MUNGER, TOLLES & OLSON LLP 355 South Grand Avenue, 35 th Floor Los Angeles, CA 90071-1560 Attorneys for Defendants	Daniel S. Schechter, Esq. Colin B. Vandell, Esq. LATHAM & WATKINS 633 West Fifth Street, Suite 4000 Los Angeles, CA 90071-2007 On behalf of Steve Jobs
---	---

I also instructed First Legal Support Services to prepare a Proof of Personal Service.

I also served a true copy of the attached documents entitled **NOTICE OF DEPOSITION OF STEVE JOBS** and **SUBPOENA IN A CIVIL CASE TO STEVE JOBS** by placing same in an addressed sealed envelope clearly labeled to identify the persons being served at the address shown below and placed said envelope for collection with the United States Postal Service located at 9404 Genesee Avenue; La Jolla, California 92037, on March 3, 2008, following ordinary business practices:

Glenn D. Pomerantz, Esq. Kelly M. Klaus, Esq. Kimberly D. Encinas, Esq. MUNGER, TOLLES & OLSON LLP 355 South Grand Avenue Thirty-Fifth Floor Los Angeles, CA 90071-1560 Attorneys for Defendants	Daniel S. Schechter, Esq. Colin B. Vandell, Esq. LATHAM & WATKINS 633 West Fifth Street, Suite 4000 Los Angeles, CA 90071-2007 On behalf of Steve Jobs
---	---

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed on March 3, 2008, at La Jolla, California.


Sherie Johnson

King &
Ballow

PROOF OF SERVICE

CASE # CV 07-03314 PSG (MANX)

31

AO 88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the
United States District Court
Northern District of California

F.B.T. Productions, LLC, et al.

v.

Aftermath Records, et al.

SUBPOENA IN A CIVIL CASE
Case No. CV 07-3314 PSG (MANx)
Central District of California

TO: Steve Jobs, CEO Apple, Inc.
c/o Daniel S. Schecter, Esq.
Colin B. Vandell, Esq.
Latham & Watkins, LLP
644 West Fifth Street
Suite 4000
Los Angeles, CA 90071-2007

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

March 27, 2008
9:00 AM P.S.T.

Latham & Watkins, LLP
140 Scott Drive
Menlo Park CA 94025

PLACE OF DEPOSITION

DATE AND TIME

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) DATE

Richard S. Burch by *MRG*
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Richard S. Burch, Esq.
King & Ballow
315 Union Street
1100 Union Street Plaza
Nashville, TN 37201
(615) 259-3458

Plaintiff

3/3/08

32

AO 88 (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Part C&D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;
(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
(ii) requires disclosure of an unrelated expert's opinion or information not describing specific events occurrences in dispute and resulting from the expert's study made not at the request of any party, or
(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and against the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

CERTIFICATE OF SERVICE**STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

I, Sherie Johnson, declare:

I am employed in the County of San Diego, State of California. I am over the age of eighteen years, and not a party to the within action. My business address is 9404 Genesee Avenue; Suite 340; La Jolla, CA 92037. On March 3, 2008, I instructed First Legal Support Services to personally serve a true copy of the attached documents entitled **NOTICE OF DEPOSITION OF STEVE JOBS and SUBPOENA IN A CIVIL CASE TO STEVE JOBS** upon:

Glenn D. Pomerantz, Esq. Kelly M. Klaus, Esq. Kimberly D. Encinas, Esq. MUNGER, TOLLES & OLSON LLP 355 South Grand Avenue, 35 th Floor Los Angeles, CA 90071-1560 Attorneys for Defendants	Daniel S. Schecter, Esq. Colin B. Vandell, Esq. LATHAM & WATKINS 633 West Fifth Street, Suite 4000 Los Angeles, CA 90071-2007 On behalf of Steve Jobs
---	--

I also instructed First Legal Support Services to prepare a Proof of Personal Service.

I also served a true copy of the attached documents entitled **NOTICE OF DEPOSITION OF STEVE JOBS and SUBPOENA IN A CIVIL CASE TO STEVE JOBS** by placing same in an addressed sealed envelope clearly labeled to identify the persons being served at the address shown below and placed said envelope for collection with the United States Postal Service located at 9404 Genesee Avenue; La Jolla, California 92037, on March 3, 2008, following ordinary business practices:

Glenn D. Pomerantz, Esq. Kelly M. Klaus, Esq. Kimberly D. Encinas, Esq. MUNGER, TOLLES & OLSON LLP 355 South Grand Avenue Thirty-Fifth Floor Los Angeles, CA 90071-1560 Attorneys for Defendants	Daniel S. Schecter, Esq. Colin B. Vandell, Esq. LATHAM & WATKINS 633 West Fifth Street, Suite 4000 Los Angeles, CA 90071-2007 On behalf of Steve Jobs
---	--

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed on March 3, 2008, at La Jolla, California.


Sherie Johnson

King &
Ballow

PROOF OF SERVICE

CASE # CV 07-03314 PSG (MANX)

34

Exhibit E

Thoughts on Music

Steve Jobs
February 6, 2007

With the stunning global success of Apple's iPod music player and iTunes online music store, some have called for Apple to "open" the digital rights management (DRM) system that Apple uses to protect its music against theft, so that music purchased from iTunes can be played on digital devices purchased from other companies, and protected music purchased from other online music stores can play on iPods. Let's examine the current situation and how we got here, then look at three possible alternatives for the future.

To begin, it is useful to remember that all iPods play music that is free of any DRM and encoded in "open" licensable formats such as MP3 and AAC. iPod users can and do acquire their music from many sources, including CDs they own. Music on CDs can be easily imported into the freely-downloadable iTunes jukebox software which runs on both Macs and Windows PCs, and is automatically encoded into the open AAC or MP3 formats without any DRM. This music can be played on iPods or any other music players that play these open formats.

The rub comes from the music Apple sells on its online iTunes Store. Since Apple does not own or control any music itself, it must license the rights to distribute music from others, primarily the "big four" music companies: Universal, Sony BMG, Warner and EMI. These four companies control the distribution of over 70% of the world's music. When Apple approached these companies to license their music to distribute legally over the Internet, they were extremely cautious and required Apple to protect their music from being illegally copied. The solution was to create a DRM system, which envelopes each song purchased from the iTunes store in special and secret software so that it cannot be played on unauthorized devices.

Apple was able to negotiate landmark usage rights at the time, which include allowing users to play their DRM protected music on up to 5 computers and on an unlimited number of iPods. Obtaining such rights from the music companies was unprecedented at the time, and even today is unmatched by most other digital music services. However, a key provision of our agreements with the music companies is that if our DRM system is compromised and their music becomes playable on unauthorized devices, we have only a small number of weeks to fix the problem or they can withdraw their entire music catalog from our iTunes store.

To prevent illegal copies, DRM systems must allow only authorized devices to play the protected music. If a copy of a DRM protected song is posted on the Internet, it should not be able to play on a downloader's computer or portable music device. To achieve this, a DRM system employs secrets. There is no theory of protecting content other than keeping secrets. In other words, even if one uses the most sophisticated cryptographic locks to protect the actual music, one must still "hide" the keys which unlock the music on the user's computer or portable music player. No one has ever implemented a DRM system that does not depend on such secrets for its operation.

The problem, of course, is that there are many smart people in the world, some with a lot of time on their hands, who love to discover such secrets and publish a way for everyone to get free (and stolen) music. They are often successful in doing just that, so any company trying to protect content using a DRM must frequently update it with new and harder to discover secrets. It is a cat-and-mouse game. Apple's DRM system is called FairPlay. While we have had a few breaches in FairPlay, we have been able to successfully repair them through updating the iTunes store software, the iTunes jukebox software and software in the iPods themselves. So far we have met our commitments to the music companies to protect their music, and we have given users the most liberal usage rights available in the industry for legally downloaded music.

With this background, let's now explore three different alternatives for the future.

The first alternative is to continue on the current course, with each manufacturer competing freely with their own "top to bottom" proprietary systems for selling, playing and protecting music. It is a

very competitive market, with major global companies making large investments to develop new music players and online music stores. Apple, Microsoft and Sony all compete with proprietary systems. Music purchased from Microsoft's Zune store will only play on Zune players; music purchased from Sony's Connect store will only play on Sony's players; and music purchased from Apple's iTunes store will only play on iPods. This is the current state of affairs in the industry, and customers are being well served with a continuing stream of innovative products and a wide variety of choices.

Some have argued that once a consumer purchases a body of music from one of the proprietary music stores, they are forever locked into only using music players from that one company. Or, if they buy a specific player, they are locked into buying music only from that company's music store. Is this true? Let's look at the data for iPods and the iTunes store – they are the industry's most popular products and we have accurate data for them. Through the end of 2006, customers purchased a total of 90 million iPods and 2 billion songs from the iTunes store. On average, that's 22 songs purchased from the iTunes store for each iPod ever sold.

Today's most popular iPod holds 1000 songs, and research tells us that the average iPod is nearly full. This means that only 22 out of 1000 songs, or under 3% of the music on the average iPod, is purchased from the iTunes store and protected with a DRM. The remaining 97% of the music is unprotected and playable on any player that can play the open formats. It's hard to believe that just 3% of the music on the average iPod is enough to lock users into buying only iPods in the future. And since 97% of the music on the average iPod was not purchased from the iTunes store, iPod users are clearly not locked into the iTunes store to acquire their music.

The second alternative is for Apple to license its FairPlay DRM technology to current and future competitors with the goal of achieving interoperability between different company's players and music stores. On the surface, this seems like a good idea since it might offer customers increased choice now and in the future. And Apple might benefit by charging a small licensing fee for its FairPlay DRM. However, when we look a bit deeper, problems begin to emerge. The most serious problem is that licensing a DRM involves disclosing some of its secrets to many people in many companies, and history tells us that inevitably these secrets will leak. The Internet has made such leaks far more damaging, since a single leak can be spread worldwide in less than a minute. Such leaks can rapidly result in software programs available as free downloads on the Internet which will disable the DRM protection so that formerly protected songs can be played on unauthorized players.

An equally serious problem is how to quickly repair the damage caused by such a leak. A successful repair will likely involve enhancing the music store software, the music jukebox software, and the software in the players with new secrets, then transferring this updated software into the tens (or hundreds) of millions of Macs, Windows PCs and players already in use. This must all be done quickly and in a very coordinated way. Such an undertaking is very difficult when just one company controls all of the pieces. It is near impossible if multiple companies control separate pieces of the puzzle, and all of them must quickly act in concert to repair the damage from a leak.

Apple has concluded that if it licenses FairPlay to others, it can no longer guarantee to protect the music it licenses from the big four music companies. Perhaps this same conclusion contributed to Microsoft's recent decision to switch their emphasis from an "open" model of licensing their DRM to others to a "closed" model of offering a proprietary music store, proprietary jukebox software and proprietary players.

The third alternative is to abolish DRMs entirely. Imagine a world where every online store sells DRM-free music encoded in open licensable formats. In such a world, any player can play music purchased from any store, and any store can sell music which is playable on all players. This is clearly the best alternative for consumers, and Apple would embrace it in a heartbeat. If the big four music companies would license Apple their music without the requirement that it be protected with a DRM, we would switch to selling only DRM-free music on our iTunes store. Every iPod ever made will play this DRM-free music.

Why would the big four music companies agree to let Apple and others distribute their music without using DRM systems to protect it? The simplest answer is because DRMs haven't worked, and may

never work, to halt music piracy. Though the big four music companies require that all their music sold online be protected with DRMs, these same music companies continue to sell billions of CDs a year which contain completely unprotected music. That's right! No DRM system was ever developed for the CD, so all the music distributed on CDs can be easily uploaded to the Internet, then (illegally) downloaded and played on any computer or player.

In 2006, under 2 billion DRM-protected songs were sold worldwide by online stores, while over 20 billion songs were sold completely DRM-free and unprotected on CDs by the music companies themselves. The music companies sell the vast majority of their music DRM-free, and show no signs of changing this behavior, since the overwhelming majority of their revenues depend on selling CDs which must play in CD players that support no DRM system.

So if the music companies are selling over 90 percent of their music DRM-free, what benefits do they get from selling the remaining small percentage of their music encumbered with a DRM system? There appear to be none. If anything, the technical expertise and overhead required to create, operate and update a DRM system has limited the number of participants selling DRM protected music. If such requirements were removed, the music industry might experience an influx of new companies willing to invest in innovative new stores and players. This can only be seen as a positive by the music companies.

Much of the concern over DRM systems has arisen in European countries. Perhaps those unhappy with the current situation should redirect their energies towards persuading the music companies to sell their music DRM-free. For Europeans, two and a half of the big four music companies are located right in their backyard. The largest, Universal, is 100% owned by Vivendi, a French company. EMI is a British company, and Sony BMG is 50% owned by Bertelsmann, a German company. Convincing them to license their music to Apple and others DRM-free will create a truly interoperable music marketplace. Apple will embrace this wholeheartedly.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Latham & Watkins LLP, 633 West Fifth Street, Suite 4000, Los Angeles, California 90071. On March 24, 2008, I caused the foregoing to be served:

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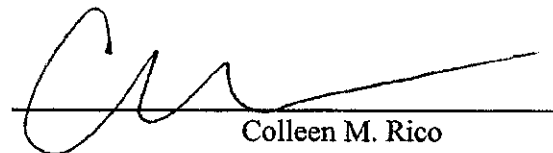
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